

1 Marjorie A. Guymon, Esq.  
2 Nevada Bar No. 4983  
3 Email: [mguymon@goldguylaw.com](mailto:mguymon@goldguylaw.com)  
4 Nedda Ghandi, Esq.  
5 Nevada Bar No. 11137  
6 Email: [nghandi@goldguylaw.com](mailto:nghandi@goldguylaw.com)  
7 **GOLDSMITH & GUYMON, P.C.**  
8 2055 Village Center Circle  
9 Las Vegas, Nevada 89134  
10 Phone: (702) 873-9500  
11 Facsimile: (702) 873-9600  
12 Attorneys for Mountain West Mortgage Company

E-Filed on February 19, 2009

7 **UNITED STATES BANKRUPTCY COURT  
8 DISTRICT OF NEVADA**

9 In re: ) Case No. BK-S-06-10725-LBR  
10 USA COMMERCIAL MORTGAGE ) Case No. BK-S-06-10726-LBR  
11 COMPANY, ) Case No. BK-S-06-10727-LBR  
12 USA CAPITAL REALTY ADVISORS, ) Case No. BK-S-06-10728-LBR  
13 LLC, ) Case No. BK-S-06-10729-LBR  
14 USA CAPITAL DIVERSIFIED TRUST ) } CHAPTER 11  
15 DEED FUND, LLC, ) Date: April 10, 2009  
16 USA SECURITIES, LLC, ) Time: 9:30 AM  
17 Debtors. )  
Affects: )  
USA Commercial Mortgage Company )  
\_\_\_\_\_  
)

18 **MOTION FOR LEAVE OF COURT TO WITHDRAW AS ATTORNEY OF RECORD**

19 **COMES NOW**, Marjorie A. Guymon, Esq., of the law firm Goldsmith & Guymon, P.C., hereby  
20 moves this Court for an Order permitting Goldsmith & Guymon, P.C. (hereinafter "G&G") to withdraw  
21 as counsel for Mountain West Mortgage Company (hereinafter "MWMC") in the above stated  
22 bankruptcy matter and in all matters before this court, pursuant to D. Nev. LR IA 10-6.  
23  
24  
25  
26  
27

1 This Motion is based upon the Points and Authorities attached hereto, all papers and pleadings  
2 on file herein, and the argument of counsel and evidence presented at the hearing.

3 Dated this 5 day of February, 2009.

4 **GOLDSMITH & GUYMON, P.C.**

5  
6 Marjorie A. Guymon, Esq.  
7 Nevada Bar No.: 004983  
8 Nedda Ghandi, Esq.  
9 Nevada Bar No. 11137  
2055 Village Center Circle  
Las Vegas, NV 89134  
Attorneys for MWMC

10  
11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 I.

13 FACTUAL BACKGROUND

14 On or about May 5, 2006, MWMC retained the law firm Goldsmith & Guymon, P.C. (hereinafter  
15 “G&G”) to represent it’s interests as a creditor in the above-referenced case. MWMC signed a “Fee  
16 Agreement” drafted by G&G, which states, “the firm may withdraw from the representation of you  
17 should you fail to promptly pay the amounts indicated in my billing statements, fail to disclose any  
18 material facts, act in a manner contrary to the advice given, or if anything else occurs that, in the  
19 attorney’s judgment, impairs her ability to continue an effective attorney-client relationship.” Attached  
20 hereto as Exhibit A is a copy of the Fee Agreement.

21 Despite several attempts to contact MWMC, G&G has not had any substantive communication  
22 with MWMC since July of 2008. G&G has unsuccessfully requested information and payment of  
23 outstanding fees. There remains a substantial balance due from MWMC to G&G for services provided  
24 (in excess of \$17,000.00), and G&G intends to employ any and all means allowed by law to collect  
25 those fees and costs. Therefore, G&G requests an order from this Court allowing them to withdraw  
26 as counsel in this matter.

II.

## POINTS AND AUTHORITIES

**A. THIS COURT HAS AUTHORITY TO ENTER AN ORDER ALLOWING AN ATTORNEY TO WITHDRAW AS ATTORNEY OF RECORD FOR A CLIENT.**

D. Nev. L.R. IA 10-6 states that "No attorney may withdraw after appearing in a case except by leave of court after notice served on the affected client and opposing counsel."

Additionally, Nevada Rule of Professional Conduct Rule 1.16(b) states that an attorney may withdraw from representation of the client if:

- (1) Withdrawal can be accomplished without material adverse effect on the interests of the client . . .
- (5) The client fails to substantially fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) The representation . . . has been rendered unreasonably difficult by the client; or
- (7) Other good cause for withdrawal exists.

Here, the Motion for Leave of Court to Withdraw as Counsel should be granted because it has become increasingly difficult to communicate with MWMC, there remains a substantial balance of fees and costs due G&G for services rendered, attorney's fees will continue, and MWMC has refused and continues to refuse to timely pay even a portion of these fees. Allowing G&G to withdraw creates no undue burden on the client, as MWMC currently refuses to keep in contact and there shall be no recognizable delay in the prosecution of the case by allowing G&G to withdraw, as G&G is unaware of pending issues where its services are needed by MWMC.

Withdrawal in this matter can be accomplished without material adverse effect on the interests of the client because G&G has principally completed the duties it was retained to perform, namely, to represent MWMC in the proceedings that involved USA Commercial Mortgage. Therefore, MWMC no longer requires the services of G&G, and should be free to retain the services of new counsel for any potential matters it wishes to pursue.

1 MWMC has also failed to substantially fulfill an obligation to G&G, as it has not made payment  
2 on this account, despite several promises in writing and verbally to do so.

3 The last known address for MWMC is:

4 Mountain West Mortgage Corporation  
5 630 Trade Center Drive  
Las Vegas, Nevada 89119

6 **III.**

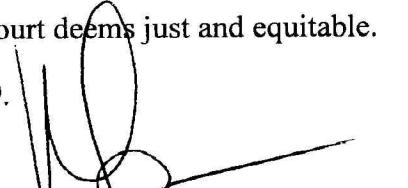
7 **CONCLUSION**

8 Therefore, the motion should be granted because G&G has performed the services it was retained  
9 to perform, and as a result withdrawal, would not be materially adverse to the interests of MWMC nor  
10 would it delay any proceedings currently pending. Further, MWMC has failed to compensate G&G for  
11 services rendered and will unlikely be able to pay for future services either based on belief that MWMC  
12 is no longer a functional company or else has chosen to willfully extinguish communication with G&G.  
13 For all the aforementioned reasons, good cause exists for G&G to be permitted to withdraw as attorney  
14 of record.

15 WHEREFORE, Petitioner requests this Court enter an Order:

16 (1) Permitting Marjorie A. Guymon, Esq., and the law firm of Goldsmith & Guymon, P.C.  
17 to withdraw as counsel for MWMC; and  
18 (2) Granting any further relief this Court deems just and equitable.

19 DATED this 5 day of February, 2009.

20   
21 Marjorie A. Guymon, Esq.  
22 Nevada Bar No. 4983  
23 Nedda Ghandi, Esq.  
24 Nevada Bar No. 11137  
25 2055 Village Center Circle  
26 Las Vegas, Nevada 89134  
27

## VERIFICATION

2 STATE OF NEVADA )  
3 COUNTY OF CLARK )ss.  
)

4 Marjorie A. Guymon, Esq., being first duly sworn on oath, according to law, deposes and says:

5 I am the Petitioner named in the foregoing MOTION FOR LEAVE OF COURT TO  
6 WITHDRAW AS ATTORNEY OF RECORD; I have read the same and know the contents thereof;  
7 and the same are true to the best of my own personal knowledge, except for those statements made upon  
8 information and belief; and as to those statements, I believe them to be true.

Marjorie A. Guymon, Esq.

12 SUBSCRIBED AND SWEARN to before me  
this 16<sup>th</sup> day of February, 2009.

14 NOTARY PUBLIC in and for said  
15 County and State.

